IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 5070 of 2005

Between:

Adapa Surya Chandra Prakasha Rao, s/o Kondaiah,
Tadepalligudem, West Godavari District.

..... PETITIONER

AND

1 The Sub-Inspector of police, Tadepalligudem Town

Police Station, Tadepalligudem, W.G.District.
2 Marisetty Hema Ramachandra Raju, s/o Gopal Rao,
Prop:Chandra Paints, K.N.Road, Tadepalligudem,

West Godavari District.
3 The Senior Divisional Manager, Divisional Office,

United India Insurance Company Limited,
K.N.Road, Tadepalligudem, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction: i) declaring that the 1st respondent is guilty of grave dereliction of duty and he has no power or authority

to prevent the petitioner from removing the debris of the shop in which he was carrying on the medical business till 9-9-2004, in the presence of the Insurance Surveyor and Loss Assessor deputed by the 3rd respondent, a responsible public officer in the discharge of his duties vested on him under law. ii) directing the 1st respondent to allow the petitioner to remove immediately the debris of the demolished structures of the shop bearing Door No.12-21-44/1, in an extent of 43 1/3 yards of site situate in ward No.28 of Tadepalligudem Town, West Godavari District in which he was carrying on Medical Business under the name and style of "Sri Lakshmi Medical" till 9-9-2004 in the presence of an Insurance Surveyor and Loss Assessors deputed by the 3rd respondent to inspect the stocks of Medicines lying under the debris of the said shop and assess the damage and loss caused to the petitioner, and iii) allowing the writ petition with costs.

Counsel for the Petitioner:MR.T.DURGA PRASAD RAO

Counsel for the Respondent No.1: GP FOR HOME

Counsel for the respondent No.2: Smt. A.Chaya Devi.

Counsel for the respondent No.3: None appeared.

The Court at the stage of admission made the following :

O R D E R

Heard both the counsel.

2. This writ petition is filed for a direction to the respondents to permit

the petitioner to remove the debris of the demolished structure of the shop bearing No.12-21-44/1 in an extent of 43 /3 yards in Ward No.28 of Tadepalligudem Town, West Godavari District, for the purpose of assessing the loss by the Surveyor of Insurance Company.

3. In the affidavit filed in support of the writ petition it is stated that the petitioner is a tenant of the shop, which was demolished. The landlord sold the land to one Lakshmi Kantamma under a registered sale deed and the said vendee filed R.C.C.No.1/2004 for eviction of the petitioner on the ground of personal occupation. It is alleged that the landlord of the petitioner by name Gopal Rao and his son, who is the 2nd respondent and the vendee Lakshmi Kanthamma colluded and demolished the building. Therefore, the petitioner filed suit in O.S.No.496/2004 on the file of Senior Civil Judge, Tadepalligudem for permanent injunction. Now the case of the petitioner is that he had insured the goods in his shop and as the 2nd respondent is not allowing his insurer to assess the damage for payment of compensation, he filed this writ petition.

4. In the counter affidavit filed by the 2nd respondent it is stated that the petitioner filed R.C.C.No.5/2004 on the file of Rent Controller at Tadepalligudem seeking a direction for restoration of the demolished building. It is further stated that in the suit filed by the petitioner in O.S.No.496/2004 for permanent injunction, he sought temporary injunction,_but the same was dismissed. It is stated that in the R.C.C.No.1/2004 filed by Lakshmi Kantamma for eviction of the petitioner, this respondent filed I.A.No.442/2005 for re-entrustment of warrant to the Commissioner for permitting him to clear the debris and

make an inventory. It is further stated that instead of filing a counter to the said I.A., the petitioner has approached this Court by way of filing writ petition.

5. The petitioner filed reply affidavit reiterating the averments made in the writ affidavit.

6. From the above facts and circumstances, it is clear that the writ petition is misconceived. The petitioner filed suit seeking permanent injunction and failed to obtain any interim orders. Further as stated in the counter affidavit, the 2nd respondent had already sought permission to remove the debris, which the petitioner is now seeking in this writ petition. The petitioner instead of filing counter at appropriate time, filed this writ petition.

7. The learned counsel for the respondent no.2 submitted that subsequently the petitioner has filed counter in I.A.No.442/2005 in R.C.C.NO.1/2004. If that is the case, then I.A. is ready for disposal.

8. When the relief sought for by the petitioner, is already sub judice, the conduct of the petitioner in filing this writ petition cannot be appreciated. Therefore, it is clear that the petitioner has not approached this Court with clean hands and, hence does not deserve for any relief.

9. Accordingly, the writ petition is dismissed with costs.

10. The petitioner shall pay the fees paid by the 2nd respondent to his counsel within a period of four weeks after filing a memo, by way of costs.

ELIPE DHARMA RAO,J

AVS/MRB

DATE:21/04/2005.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1) 1 The Sub-Inspector of police, Tadepalligudem Town

Police Station, Tadepalligudem, W.G.District.
2 Marisetty Hema Ramachandra Raju, s/o Gopal Rao,
Prop:Chandra Paints, K.N.Road, Tadepalligudem,

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3 The Senior Divisional Manager, Divisional Office,

United India Insurance Company Limited,
K.N.Road, Tadepalligudem, West Godavari District.

4. 2 ccs to G.P. for Home, A.P. High Court Building (OUT).

5 CD copies

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